

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FELTON L. MATTHEWS, JR.,

3:16-cv-00077-MMD-VPC

Plaintiff,

V.

UNITED STATES OF AMERICA, *et al.*,

Defendants.

REPORT AND RECOMMENDATION
OF U.S. MAGISTRATE JUDGE

This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and L RIB 1-4. Before the court is Felton L. Matthews, Jr.’s (“plaintiff”) Motion for Leave to File an Amended Complaint (ECF No. 57-1). For the reasons discussed below, the court recommends that the amended complaint be dismissed without prejudice and without leave to amend.

J. BACKGROUND AND PROCEDURAL HISTORY

Plaintiff is a prisoner in the custody of the Nevada Department of Corrections (“NDOC”). On December 1, 2015, plaintiff filed a civil complaint against local, state, and federal actors in Nevada state court, alleging violations of his civil rights and Nevada’s anti-racketeering statutes. (*See* ECF No. 2-1.) The matter was promptly removed and on April 18, 2016, the Federal Government filed its motion to dismiss. (ECF Nos. 1, 15.) On June 15, 2016, the court screened the complaint pursuant to 28 U.S.C. § 1915A and dismissed all claims against the State defendants because certain defendants were immune from suit, plaintiff failed to state a claim, and he lacked standing. (ECF No. 32.) Plaintiff was given leave to amend the complaint to rectify, if possible, these deficiencies. (*See id.*) On September 26, 2016, the District Court granted the Federal Government’s motion to dismiss with prejudice. (ECF No. 60.)

On August 19, 2016, plaintiff filed a Motion for Leave to Supplement Original Complaint, but did not include a copy of his proposed amended complaint. (ECF No. 48.) On September 21,

1 2016, plaintiff filed a Motion for Leave to File an Amended Complaint, with the proposed
 2 amended complaint attached. (ECF Nos. 57, 57-1.)

3 **II. LEGAL STANDARD**

4 Applications to proceed *in forma pauperis* by *pro se* plaintiffs are governed by 28 U.S.C.
 5 § 1915. Section 1915 provides, in relevant part, that “the court shall dismiss the case at any time
 6 if the court determines that . . . the action or appeal (i) is frivolous or malicious; (ii) fails to state
 7 a claim upon which relief may be granted; or (iii) seeks monetary relief against a defendant who
 8 is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B)(i)–(iii). Dismissal of a complaint for
 9 failure to state a claim upon which relief may be granted is provided for in Federal Rule of Civil
 10 Procedure 12(b)(6), and the court applies the same standard when reviewing the adequacy of a
 11 complaint under § 1915. *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012).

12 Under Rule 12(b)(6), the court is to dismiss when the complaint fails to “state a claim for
 13 relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).
 14 Courts accept as true all well-pled factual allegations, set aside legal conclusions, and verify that
 15 the factual allegations state a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 679
 16 (2009). Although the complaint need not contain detailed factual allegations, it must offer more
 17 than “a formulaic recitation of the elements of a cause of action” and “raise a right to relief
 18 above a speculative level.” *Twombly*, 550 U.S. at 555.

19 Upon review, the complaint is construed in the light most favorable to the plaintiff.
 20 *Chubb Custom Ins. Co. v. Space Systems/Loral Inc.*, 710 F.3d 946, 956 (9th Cir. 2013). The court
 21 takes particular care when reviewing the pleadings of a *pro se* plaintiff, as a more forgiving
 22 standard applies to litigants not represented by counsel. *Nordstrom v. Ryan*, 762 F.3d 903, 908
 23 (9th Cir. 2014). In addition, a *pro se* plaintiff must be given notice of the deficiencies of his or
 24 her complaint, and leave to amend, unless the opportunity to amend would be futile. *Cato v.*
 25 *United States*, 70 F.3d 1103, 1106 (9th Cir. 1995). Despite this leniency, a district court may in
 26 its discretion dismiss an *in forma pauperis* complaint if the claim “lacks an arguable basis in
 27 either law or fact.” *Id.* This includes claims based on untenable legal conclusions (e.g., claims
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1 against defendants who are immune from suit or claims of infringement of a legal interest which
 2 clearly does not exist) or fanciful factual allegations (e.g., fantastic or delusional scenarios).

3 III. DISCUSSION

4 Plaintiff's amended complaint utterly fails to correct the defects identified in this court's
 5 prior screening order. First, plaintiff's claims for monetary damages against judges, court clerks,
 6 and prosecutors are barred, as these defendants are entitled to immunity from civil liability. *See*
 7 *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986) ("[j]udges and those performing judge-
 8 like functions are absolutely immune from damage liability for acts performed in their official
 9 capacities"); *Mullis v. U.S. Bankr. Ct. for Dist. of Nev.*, 828 F.2d 1385, 1390 (9th Cir. 1987)
 10 (clerks enjoy absolute quasi-judicial immunity "when they perform tasks that are an integral part
 11 of the judicial process"); *Imbler v. Pachtman*, 424 U.S. 409, 424 (1976) (absolute immunity
 12 protects those activities undertaken by a prosecutor in his or her function as an advocate that are
 13 "intimately associated with the judicial phase of the process").

14 Second, the amended complaint does not adequately allege that NDOC officials
 15 intentionally interfered with his access to courts. *See Jackson v. Procunier*, 789 F.2d 307, 311–
 16 12 (5th Cir. 1986). To prevail on such a claim, a plaintiff must demonstrate that the interference
 17 was done intentionally and with an improper motive, *see Smith v. Maschner*, 889 F.2d 940, 944
 18 (10th Cir. 1990), and that a "nonfrivolous" underlying claim was frustrated or impeded as a
 19 result, *Lewis v. Casey*, 518 U.S. 343, 354–55 (1996). Here, as in his original complaint, plaintiff
 20 merely alleges that defendants worked in the prison mail room or were otherwise involved in the
 21 processing of his legal filings. He has not described the specific pieces of mail that were
 22 tampered with, when or how often the tampering occurred, or which specific court filings were
 23 affected. Beyond job titles, plaintiff has not linked the named defendants to the actions alleged,
 24 or provided facts to suggest the actions were intentional. And finally, beyond conclusory
 25 assertions, plaintiff offers no facts to support the inference that mail tampering adversely affected
 26 a nonfrivolous legal claim. His allegations, in sum, are too speculative to state a cognizable claim
 27 that his right to due process was infringed upon. Because plaintiff fails to allege a violation of his
 28 civil rights, his conspiracy claims also fail. As with plaintiff's original complaint, the amended

1 complaint contains legal conclusions, but no facts to support the claim of a conspiracy, as such
 2 these claims must also be dismissed.

3 Finally, the amended complaint includes new claims that are not based on the original
 4 complaint. Specifically, plaintiff alleges that: (1) he is being denied protective segregation and is
 5 forced to cell with other inmates in violation of his Eighth Amendment right against cruel and
 6 unusual punishment; (2) various NDOC officials have filed false notices of charges against him;
 7 and (3) various officials and persons retaliated against him for filing a lawsuit against Judge
 8 Fairman. (*See ECF No. 57-1.*) The Federal Rules of Civil Procedure do not allow a litigant to
 9 raise unrelated claims involving different defendants in a single action. *See Fed. R. Civ. P. 18(a)*
 10 and 20(a). “[U]nrelated claims that involve different defendants must be brought in separate
 11 lawsuits.” *Bryant v. Romero*, No. 1:12-CV-02074-DLB PC, 2013 WL 5923108, at *2 (E.D. Cal.
 12 Nov. 1, 2013) (citing *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007)). One of the purposes
 13 of this rule is to ensure that prisoners pay the required filing fees for their lawsuits and to prevent
 14 prisoners from circumventing the three strikes rule under the Prison Litigation Reform Act, 28
 15 U.S.C. § 1915(g).

16 IV. CONCLUSION

17 Although the court construes plaintiff’s complaint liberally, even “a liberal interpretation
 18 of a civil rights complaint may not supply essential elements of the claim that were not initially
 19 pled.” *Bruns v. Nat’l Credit Union Admin.*, 122. F.3d 1251, 1257 (9th Cir. 1997). For all the
 20 foregoing reasons, plaintiff has failed to state a colorable § 1983 claim against any of the named
 21 defendants, and the amended complaint must be dismissed. While mindful that *pro se* litigants
 22 are generally entitled to notice of the deficiencies in the complaint and an opportunity to amend,
 23 *Cato*, 70 F.3d at 1106, the court concludes that further leave to amend would be futile in this case.
 24 Plaintiff was previously advised of the applicable legal standards and granted the opportunity to
 25 cure the defects discussed above. (*See ECF No. 32.*) Plaintiff was either unable or unwilling to
 26 do so. Therefore, plaintiff’s amended complaint and this action should be dismissed without
 27 leave to amend. *See, e.g., Frank v. City of Henderson*, 2015 WL 5562582, at *5 (D. Nev. Sept.
 28 21, 2015) (finding further leave to amend futile where plaintiffs amended complaint and again

1 failed to allege sufficient facts to support § 1983 claim); *Piovo v. Stone*, No. 2:13-cv-01922-
2 APG-GWF, 2015 WL 1014344, at *3 (D. Nev. March 9, 2015) (dismissing without leave to
3 amend where plaintiff failed “to adequately allege a federal claim despite being given three
4 opportunities to do so”).

5 The parties are advised:

6 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
7 Practice, the parties may file specific written objections to this Report and Recommendation
8 within fourteen days of receipt. These objections should be entitled “Objections to Magistrate
9 Judge’s Report and Recommendation” and should be accompanied by points and authorities for
10 consideration by the District Court.

11 2. This Report and Recommendation is not an appealable order and any notice of
12 appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of judgment.

13 **V. RECOMMENDATION**

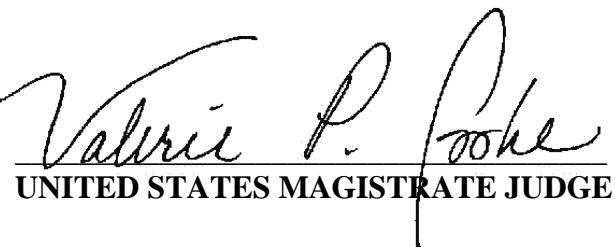
14 **IT IS THEREFORE RECOMMENDED** that plaintiff’s motion to file amended
15 complaint (ECF No 57) be **GRANTED**;

16 **IT IS FURTHER RECOMMENDED** that the amended complaint be **DISMISSED**
17 **WITHOUT PREJUDICE, WITHOUT LEAVE TO AMEND**;

18 **IT IS FURTHER RECOMMENDED** that all pending motions (ECF Nos. 11, 25, 38,
19 46, 48, 49, 54, 55, 58, 59, 69, 73) be **DENIED** as moot.

20 **IT IS FURTHER RECOMMENDED** that the Clerk **ENTER JUDGMENT** and close
21 this case.

22 **DATED:** January 3, 2017.



UNITED STATES MAGISTRATE JUDGE

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